

REPORT ON CENTRE-STATE
RELATIONSHIPS, JUNE,
1969.

INDIA, ADMINISTRATIVE REFORMS
COMMISSION.

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ADMINISTRATIVE REFORMS COMMISSION

REPORT

ON

CENTRE - STATE RELATIONSHIPS

June, 1969

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CHAIRMAN

ADMINISTRATIVE REFORMS COMMISSION
GOVERNMENT OF INDIA

SARDAR PATEL BHAWAN, NEW DELHI

June 19, 1969.

Dear Prime Minister,

I have pleasure in presenting to you the Administrative Reforms Commission's report on Centre-State Relationships. This is the thirteenth report of the Commission. It is unanimous.

2. The constitutional edifice of India is neither unitary nor federal in the strict sense of the term. The divisive forces, that were at work throughout the history of India and the conditions that existed at the time of the framing of the Constitution compelled the founding fathers to make provisions for ensuring Indian unity which was considered as much precious as Independence. The Constitution in its very first Article says that India shall be a "Union of States", and the word "federation" is nowhere used. The Constitution is so well-balanced that while providing maximum possible autonomy to the States, it places in the hands of the Centre adequate powers to ensure the unity and integrity of the country. This balance has been tilted to some extent in favour of the Centre during the course of the last two decades. The relationship between the Centre and the States was, however, generally smooth till about the time of the General Elections of 1967, the main reason being that one political party, *viz.*, the Indian National Congress, dominated the scene having its ministries both at the Centre and in the States. Thereafter, though the Indian National Congress continued to have its ministries at the Centre and in some States, other political parties formed ministries either of one party or of multi-parties in other States. Different ideologies, policies and programmes of the various political parties that assumed office generated controversies between the Centre and the States. The United Front Ministries of West Bengal and Kerala States in particular spearheaded the controversy asserting their own rights *vis-a-vis* the Centre. But these controversies pertain mostly to matters administrative and financial and not to Constitutional issues. The eminent leaders of various political parties who appeared before the Commission emphasised their faith in Indian unity, though they argued for more autonomy and initiative for the States. We, therefore, do not think it necessary to suggest any amendments to the Constitution. We have, however, made recommendations to delegate more financial and administrative functions and powers to the States with the twin objectives of making the relations between the Centre

and the States smoother and introducing efficiency and economy in the administrations of the Union and State Governments. It is not in the amendment of the Constitution that the solution of the problems of the Centre-State relationship is to be sought, but in the working of the provisions of the Constitution by all concerned in the balanced spirit in which the founding fathers intended them to be worked.

3. Some political parties and the Administrative Reforms Commission's Study Team on Centre-State Relationships favour the constitution of an Inter-State Council to discuss and resolve problems of Centre-State relationships as and when they arise. Article 263 of the Constitution authorises the President to constitute such a Council. In a democratic set-up, a spirit of responsiveness on the parts of those who govern, to the wishes of the opposition parties, makes for its smooth functioning. Informal conferences of Chief Ministers and other Ministers have not been able to deal with controversies that have arisen in the area of Centre-State relationships with speed and effectiveness. We have, therefore, recommended the constitution of an Inter-State Council. To begin with, it may be set-up for a period of two years. Its continuance thereafter may be decided in the light of the experience gained. The Inter-State Council under Article 263 has only recommendatory functions.

4. We find that the main grievances of the States lie in the financial field. We have made important recommendations to bring satisfaction to the States. The first relates to the States' debts to the Centre. The piling up of the States' debts to the Centre, arising out of Plan loans, has posed a difficult problem of repayment which, if not satisfactorily solved, will throw the whole programme of planned development into disarray. We have recommended that in future, Plan loans to the States should be confined to productive schemes and that any assistance to be given for the States' carrying out unproductive schemes of a capital nature, should be in the form of capital grants. The schedules of repayment of the loans should be related to the income-yielding potential of the schemes, and Sinking Funds should be established for providing the means for repayment of the loans in accordance with such schedules.

5. The problems of repaying the outstanding Plan loans to the States as well as the question of setting up of Sinking Funds for the amortisation of the debts should be referred to a Committee of Experts. One of the questions for consideration of such a Committee is the apportionment of the non-productive element of the outstanding loans between the Centre and the States.

6. Plan grants are now made on the basis of the recommendations of the Planning Commission. There is weight in the argument that as the Planning Commission is a body established by the Central Government

under an executive order, it would be desirable for another body created by law, to be entrusted with the responsibility of formulating the principles governing the allocation of Plan grants. Accordingly, we have recommended that the Finance Commission should be entrusted with this responsibility. The appointment of the Finance Commission should be so timed that when making its recommendations, it will have before it an outline of the Five-Year Plan as prepared by the Planning Commission. A Member of the Planning Commission should be on the Finance Commission.

7. The office of the Governor under the Constitution is of high importance, serving as a link between the Centre and the State concerned. The Governor of a State is appointed by the President and holds office during the pleasure of the President. The executive power of the State is vested in the Governor and is exercised by him in accordance with the Constitution either directly or through officers subordinate to him. The Chief Minister is appointed by the Governor and other Ministers are appointed by the Governor on the advice of the Chief Minister, all of them holding office during the pleasure of the Governor. The Constitution has made the Governor a key figure. But, he has to act on the advice of his Ministers which, in practice, means that the Ministers exercise power and authority in his name. The Council of Ministers consists of the chosen leaders of the people having their confidence, whereas, the Governor is a person appointed by the President. Responsibility, therefore, vests with the Ministers, while the Governor remains the constitutional head. But, under the oath he takes under Article 159, he undertakes to preserve, protect and defend the Constitution and the law. While the Governor personally and directly does not exercise any authority except in certain cases, he has the duty to see that administration runs according to the Constitution and law. This has, therefore, resulted in a very delicate balance of relationship between the Governor and the Ministers on the one hand, and the Governor and the President on the other. This relationship was happily smooth and cordial for nearly two decades until the General Elections of 1967. Differences and controversies have arisen in more recent times in regard to his functioning and exercise of his discretionary powers, mainly because of one political party having a ministry at the Centre and other political parties forming ministries in some of the States. Situations arose in which the decisions taken by the Governors led to a good deal of public controversy. The decisions Governors take by using their own discretion may be explicit or implied by the necessary "intendment" of the concerned provisions of the Constitution. But, the exercise of such discretionary and other powers, of the Governors must, in dealing with similar situations, arising in different States, be uniform and have the impress of impartiality and create confidence in the minds of all

concerned. The decisions taken by some of the Governors have been publicly assailed as partisan or as having emanated from the Central Government. The Central Government being in the hands of a political party creates suspicions in the minds of other political parties who are in office in some States. It is necessary to keep the office of the Governor above controversies and ensure that his discretionary decisions command all round acceptability to the extent possible. We have, therefore, recommended formulation of guidelines for the Governors to exercise their powers, discretionary and constitutional. The Inter-State Council may initially formulate these guidelines. After acceptance by the Union Government, they could be issued in the name of the President and laid before the Parliament.

8. We have, in the Chapter on the "Role of the Governor", also referred to situations in which deadlocks had been created in the working of the legislative machinery and have made recommendations for dealing with them. When the Governor has reason to believe that the Ministry has ceased to command a majority in the Assembly, he should come to a final conclusion in this matter by summoning the Assembly and ascertaining its verdict. When a question arises so as to whether the Council of Ministers enjoys the confidence of the majority in the Assembly and the Chief Minister does not advise the Governor to summon the Assembly, the Governor may, if he thinks fit, *suo motu*, summon the Assembly for obtaining its verdict on the question. Where functionaries like the Speaker act arbitrarily and prevent the functioning of the Legislatures, effective remedies must be devised by the Legislatures themselves by formulating rules of business which would enable them to transact the business for which they were called into session.]

9. The relations between the Centre and the States in the field of law and order have generated acute controversy in recent months. We have examined this problem and our conclusions are that—

- (a) the use of the naval, military, or air force or any other armed forces of the Union in aid of civil power can be made either at the instance of the State Government or *suo motu* by the Centre; and
- (b) the Centre has the right to exercise its discretion to locate such forces in the States and deploy them for maintaining public order and for purposes of the Centre, such as protection of Central property and works and Central staff.

10. We have already considered several matters connected with Centre-State Relationships in some of our earlier reports. The procedure for the

formulation of Plans and for allocating Plan assistance, has been fully gone into in our report on the Machinery for Planning. The role of the Central Ministries with regard to subjects falling in the State List has been considered in our report on the Machinery of the Government of India and its Procedures of Work. All-India Services and Public Service Commissions have been dealt with in our report on Personnel Administration. We have reiterated in this report our recommendations on these subjects.

11. Several State Governments—both “Congress” and “non-Congress”—had raised before us some problems of an administrative nature. We have dealt with some of them in this report. The others are covered by our recommendations pertaining to decentralisation and delegation of powers to the States. Over-centralisation of administrative and financial powers, whether within the State administration or within the Central administration or in the area of Centre-State relationships, will neither help efficiency nor smooth working in administration. The bureaucratic machine tends to centralise powers and functions, and it is the duty of wise leadership to discountenance such centralisation. Such questions may be considered by the Inter-State Council, if relief is not available at the appropriate levels of administrations at the Centre and the States.

12. The Commission had the benefit of the report of the Study Team on Centre-State relationships. The Chairman and members of the Study Team have done excellent work. Several Governors, Chief Ministers, leaders of political parties and Secretaries to the Government of India have helped the Commission with their views and proposals. The Commission places on record their gratitude to all of them.

Your sincerely,
Sd./-
K. HANUMANTHAIYA.

Shrimati Indira Gandhi,
Prime Minister of India,
NEW DELHI.

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CHAPTER I

INTRODUCTORY

The subject of Centre-State relationships is of such great importance that the Government of India have included it specifically as a separate item in our terms of reference. These relationships range over a wide area and cover almost the entire field of administration and in fact, they overflow into the realm of politics. While the provisions of the Constitution regulate these relationships in letter, a great deal depends on the spirit in which they are worked. The case with which Centre-State relationships were regulated in the first twenty years since Independence apparently induced a feeling of complacency about the future. The developments of the last two years have, however, shaken us out of that complacency. It has now become necessary to take stock of the situation and devise suitable steps for removing the strains and stresses which have developed in the field of Centre-State relationships.

2. The Commission felt that the important subject of Centre-State Relationships should be gone into in detail by a team which included persons who have had wide experience of public life or were eminent in the judicial world. Accordingly, a Study Team was constituted with Shri M. C. Setalvad as the Chairman, Shri M. Bhaktavatsalam, the then Chief Minister of Madras, Shrimati Tarkeshwari Sinha, M. P., and Shri G. S. Sharma, Director, Indian Law Institute, were the other non-official members. Shri P. C. Mathew and Shri N. K. Mukarji, senior officers of the Government, were the official members. Shri N. K. Mukarji also functioned as the Director of Studies. We would like to place on record our deep appreciation of the excellent work done by the Team and the valuable report submitted by it.

3. The Commission had the benefit of the views of the Chief Ministers of the States of Assam, Andhra Pradesh, Haryana, Jammu & Kashmir, Kerala, Tamil Nadu, Maharashtra and West Bengal, the Deputy Chief Minister of Orissa, the Governors of Andhra Pradesh, Gujarat, Maharashtra, Mysore and Orissa and senior officers of the Government of India. During the later stages of our consideration of the subject of Centre-State Relationships, we also derived benefit from discussions with the following leaders of political parties, *viz.*, Shri S. N. Dwivedy, Leader of the P.S.P. in Lok Sabha, Shri S. M. Joshi, the then Chairman of the S.S.P., Shri

Balraj Modhok, Shri P. Ramamurthy and Prof. Hiren Mukherji, Deputy leaders in the Lok Sabha of the Jan Sangh, Communist Party (Marxist) and C.P.I., respectively.

4. We have covered several aspects of the administration which have a bearing on Centre-State Relationships in our Reports on the Machinery of Planning, Personnel Administration and the Machinery of Government of India and its Procedures of Work. We have reiterated the relevant recommendations and reproduced the more important of them at appropriate places in this Report. We have also made new recommendations covering the above aspects with a view to securing and promoting harmonious relationships between the Centre and the States.

CHAPTER II

THE UNITY OF INDIA: ITS PARAMOUNT IMPORTANCE

India has always been a distinct entity from time immemorial. The Indian Ocean and its two arms, the Bay of Bengal and the Arabian Sea in the South and the great Himalayan range in the North have given it an enduring shape. Eastern and western boundaries on the North of this vast land mass have sometimes fluctuated. In the west, from the present border to the Persian border, the boundary has gone on adjusting and re-adjusting. In the east, the boundary between India and Burma runs through hills and valleys. In spite of fluctuations in the boundaries, the concept of Indian unity has remained firmly embedded in the minds of her people. Deeper and far-reaching bonds of unity than the seas and the mountains have been at work in spiritual and cultural levels of society in India. Political changes have continually been taking place without affecting this deeper and more abiding unity.

2. In so far as recorded history is concerned, kings, emperors and rulers have often nursed the ambition of integrating the whole of India under a single political power. The Maurya empire of 2000 years ago, spread its sway over most of the areas, but it did not extend to the whole of the southern peninsula. Subsequent empire-builders like the Mughals did achieve some measure of success which, however, was not complete. Much of South India and many other parts of India were outside the jurisdiction of their empire. But the British, who arrived last on the scene, succeeded in establishing their empire covering the whole of India. Their political approach was one of 'live and let live' and, therefore, they allowed more than 500 governments in the form of Indian States to continue. Though the political pattern was not as homogeneous as we have under our present Constitution, the suzerainty of one power operated throughout the length and breadth of India.

3. With the dawn of Independence, the natural urge of the people of India to forge a complete political unity, without fissure or flaw naturally asserted itself. The idea of Independence was not limited to mere political freedom, but comprehended the building of a strong and harmonious nation with democratic institutions established and civil liberties guaranteed. The independence and unity of India were considered to be inseparable, one being the complement of the other. When the Constituent Assembly of India met, the founding fathers were unanimous in insisting

that there should be one governmental edifice for the whole of India and one flag for the whole nation. Therefore, the Constituent Assembly framed a Constitution based upon the twin concepts of unity and democracy.

4. The Constitution that was so framed was neither purely 'unitary' nor purely 'federal'. The word 'federation' is nowhere found in the Constitution. To meet the requirements of the situation, the Constituent Assembly described India as a Union of States. This was deliberately done in order to discountenance fissiparous tendencies and centrifugal forces. Residuary powers were conferred on the Union and not on the States, and the right to secede from the Union was not recognised. We have, therefore, kept this background in view in suggesting reforms for improving Centre-State relations.

5. In our anxiety, however, to sustain and strengthen the unity of India, we should not think of indiscriminately concentrating all administrative power with the Union. There are two levels in the Indian Governmental edifice - one, Constitutional and the other, administrative. So far as the Constitutional structure is concerned the Centre must have powers to safeguard the unity of India and to make any recalcitrant State conform to the concept of Indian unity. At the administrative level, over-concentration of authority should be avoided. Unnecessary accumulation of administrative power increases not only delays, but also causes irritation and friction. The people of India should have an administration which works with efficiency and economy and is capable of satisfying the needs of the people. Concentration of administrative powers at a distant Centre tends to breed inefficiency and resentment, which in turn sets the minds of the people against the Centre. A wise and farsighted administration must be committed to decentralisation of administrative powers. That was the reason why Gandhiji, the Father of the Nation, enunciated the cardinal principle that the governmental edifice in India should be like a Pyramid, broad-based at the lower levels. If placed upside down, the Pyramid will for ever be unstable. The balance provided for in the Constitution should not be tilted against either the States or the Centre. We have kept the requirements in view in making our recommendations.

6. The problem of Centre-State relations has acquired new dimensions and new importance in recent times due to several political parties being in power at the Centre and in the States. Such problems existed even when there was the same party in power in the States and at the Centre. The representatives of the people in the States did plead for more powers to the States or for adjustments in the framework in several matters affecting the relations between the Centre and the States. But then these problems never assumed such magnitude and intensity. A

single party in control over affairs at the Centre as well as in the States with a powerful leadership at the Centre provided an alternative and extra-constitutional channel for the settlement of Centre-State problems. But this position has changed after the General Elections of 1967. Though the Congress party continued to have its ministries in Andhra Pradesh, Assam, Mysore, Madhya Pradesh, Maharashtra, Gujarat, Jammu & Kashmir and the Union Territories, West Bengal and Kerala came to have United Front ministries consisting of the representatives of a number of parties. Punjab came to have likewise a multi-party Government. In Tamil Nadu, a single party, the D.M.K., came to power. In Orissa, the ministry was formed by a coalition of two parties, Swatantra and Jana Congress. In Rajasthan an interregnum followed the General Election, after which a Congress ministry was formed. In Uttar Pradesh, Bihar and Madhya Pradesh, Congress ministries were short-lived and subsequently coalition ministries came into existence. Haryana had a Congress ministry to begin with, but it founded because of party defections and there was a short-lived non-Congress ministry. The ministries in Uttar Pradesh and Bihar proved unstable, leading to mid-term elections. The mid-term elections brought about a confused political picture. The Congress was able to form ministries in Uttar Pradesh and Bihar, in the latter case by a coalition with other parties, whereas in Punjab and West Bengal multi-party ministries came into existence.

7. With the assumption of power by diverse political parties, divergences have arisen on account of the differing political ideologies and programmes. Political differences between parties are best dealt with on the political plane, failing which they have to be resolved according to the methods visualized in the Constitution. Where issues can be settled on the political plane, the question of Constitutional relationship does not pose a major problem. It is only where issues cannot be so settled that the problem arises of resolving Centre-State or inter-State differences within the framework of the Constitution.

8. The preamble to the Constitution announces in unmistakable terms that the sovereignty of India resides in its people as a whole. To this basic concept has been added the need for planned economic development of the nation. This necessitates that certain principles of uniformity in economic development and in the formulation of economic policies have to be evolved and that the imbalance in the development of different areas of the country has to be rectified over a period of time. This cannot be achieved if each State is free to plan its development on the lines that it desires without regard to the needs or the pooled resources of the country as a whole. It is true that the States should have a certain degree of freedom in shaping their policies and the course of their economic development, but they have to fit into a Central scheme which comprehends the requirements of the country considered as a whole. The Constitution

confers on the Centre powers required not only for directly discharging its responsibilities in the 'central' fields like defence, foreign affairs, border safety and internal security, but also for regulating action in the State fields to (a) ensure coordination, (b) maintain the stability and integrity of India, and (c) secure uniform and common lines of action, when it is in the national interest to do so. Further, the duty of ensuring that India is governed in accordance with the provisions of the Constitution has been laid squarely on the shoulders of the Union. The Centre has been given extraordinary powers to take over the functions of the State authorities in times of emergency. However, the Constitution ensures that, in normal times, the autonomy of the States is preserved and respected. This has been done by allocating several subjects to the exclusive fields of the Centre and the States respectively and several others to a 'Concurrent field' and stipulating that in the 'State' and 'Concurrent' fields, the States should be free to follow their own policies except to the extent that Parliament itself decides to legislate under the powers given to it under the Constitution.

9. We have considered the question whether there should be any change in the provisions governing the distribution of the subjects between the Centre and the States. The representatives of various parties and interests with whom we and the Study Team have had discussions are agreed that no amendment of the Constitutional provisions is necessary.

10. In regard to the financial powers and allocation of resources, some dissatisfaction or discontent with the existing state of things under the Constitution has been expressed. We are of the view that satisfaction in this matter can be brought about by suitable arrangements for devolution of financial powers so as to allow the State resources to correspond to their obligations. The devolutions should be made in a manner that enables an integrated view to be taken of the plan as well as non-plan needs of both the Centre and the States. For this purpose, it does not seem to us necessary that any of the items of revenue or subjects under the Constitution, which have been allocated to the Centre, should be allocated to the States or *vice versa*.

11. Much of the conflict between the Centre and the States has arisen not because of any faulty distribution of powers or resources between the Centre and the States, but because of the methods and procedures that have been followed in giving effect to the Constitutional provisions. It has often happened that in the zeal for achieving quick results through centralized planning, administrative methods and procedures have been adopted which tended towards excessive interference with the freedom of the States, to work out their policies and programmes. It is not that the States are free from blame. Evidence is not lacking that the formulation of planning by the States in the initial stages has been on over-ambition

tious lines and that, when the Centre has intervened and placed curbs on unrealistic proposals, it has met with resistance. It was comparatively easy, as we have said earlier, to meet such situations when the same political party ruled both at the Centre and in the States and when the Central leadership was strong enough to iron out the differences between the Centre and the States on the political plane. However, now that there are diverse political parties in power at the Centre and in the States, the problems of Centre-State relationship have arisen in an acute form.

12. It is our firm view that the basic Constitutional fabric of ours is quite sound and must remain intact. The Constitution is flexible enough to ensure its successful working irrespective of whichever party may be in power, provided that those who are in power mean to work it and not wreck it. We are convinced that it is not in the amendment of the Constitution that the solution of the problems of Centre-State relationships is to be sought, but in the working of the provisions of the Constitution by all concerned in the spirit in which the founding fathers intended them to be worked. There is no other way of ensuring cordial and fruitful Centre-State relations.

Recommendation: 1

We recommend :

No constitutional amendment is necessary for ensuring proper and harmonious relations between the Centre and the States, inasmuch as the provisions of the Constitution governing Centre-State relations are adequate for the purpose of meeting any situation or resolving any problems that may arise in this field.

CHAPTER III

ALLOCATION OF FUNCTIONS AND RESOURCES BETWEEN THE CENTRE AND THE STATES

The Seventh Schedule to the Constitution enumerates matters in respect of which the Centre and the States respectively have exclusive powers to make laws and also sets forth in a Concurrent List certain other matters in respect of which laws can be enacted by the Centre as well as the States. This distribution of legislative powers also forms the basis for the distribution of functions between the Centre and the States. With the undertaking of economic and social planning—a subject included in the Concurrent List—the Centre has taken on an active role in the formulation and the over-seeing of the execution of Plan programmes in fields which also include subjects which fall in the State List. The role of the Central agencies which had, prior to the advent of planning, been to function as observers, coordinators and advisers, has expanded greatly and tended to outstrip its legitimate jurisdiction. Factors such as a single political party, viz., the Indian National Congress being in power at the Centre and in the States for a period of nearly two decades after Independence, and the dependence of the States on the Centre for financial and other resources, have increasingly contributed to strengthen this tendency. The Study Team has examined this aspect of Centre-State relations and made suggestions for clearly defining the role, of the Central agencies with regard to matters falling within the State List. These suggestions were considered by us in paragraphs 83 to 87* of our Report on the Machinery of the Government of India and its Procedures of Work. We reiterate our recommendation made therein, viz., that the role of the Centre in areas covered in the State List should be largely that of pioneer, guide, disseminator of information, and overall planner and evaluator. Moreover, in the context of differing ideologies and differing programmes of political parties in power in the various States and the Centre, the same approach towards programmes cannot necessarily be adopted throughout the whole country. We, therefore, feel that without prejudice to the unity, integrity, and security of the country, the fullest possible discretion should be given to the States to order their policies and measures according to their ideologies and programmes within the resources available to them in the areas falling within the State List.

*See Appendix I.

Recommendation: 2

We recommend:

As recommended by us in our Report on the Machinery of the Government of India and its Procedures of Work, the role of the Central Ministries and Departments with regard to subjects falling within the State List should be confined to the matters listed in paragraph 85 of that Report. An analysis should be made, in the light of the criteria laid therein, of the items of work now handled in the Central agencies and such items as do not fulfil the criteria should be transferred to the States.

DISTRIBUTION OF FINANCIAL POWERS BETWEEN THE CENTRE AND THE STATES

2. The Centre and the States have their own powers to levy taxes, duties and fees enumerated in the respective Lists. Each State collects and appropriates the taxes, duties and fees it levies. The net proceeds of some of the taxes and duties levied by the Union are given over, wholly or in part, to the States. Such levies fall into four groups. Stamp duties and duties of excise on medicinal and toilet preparations are levied by the Government of India but (excepting those leviable in Union Territories) are collected and appropriated by the States. Certain duties and taxes specified in Article 269 of the Constitution are levied and collected by the Government of India and such portion of the net proceeds thereof as is not attributable to Union Territories is assigned to the States in accordance with the principles of distribution laid down by Parliament by law. Taxes on income, other than agricultural income, form the third category of taxes which are levied and collected by the Government of India and distributed between the Union and the States in the manner provided in Clause (2) of Article 270 of the Constitution. Union duties of excise other than those on medicinal and toilet preparations fall in the fourth group. The whole or part of the net proceeds of these duties may be assigned to the States as provided by Parliament by law. The distribution between the Centre and the States of taxes on income, other than agricultural income, is made in accordance with a Presidential Order. Such an order can be passed only after taking into consideration the recommendations made in this regard by a Finance Commission set up under Article 280. The distribution of the net proceeds of the excise duties referred to in Article 272 is determined by an Act of Parliament. In this case also, recommendations of the Finance Commission are called for before legislation is sponsored for the distribution of the excise duties. Similarly, in respect of the net proceeds of the taxes referred to in Article 269, the

recommendations of the Finance Commission with regard to the manner of distribution are taken into account before the necessary legislation is sponsored in that regard.

3. The States are given, in addition to the resources allocated as above, grants-in-aid of their revenues which are provided for by Article 275. The Finance Commission makes recommendations on the principles which should govern such grants-in-aid. Besides the grants-in-aid made under Article 275 on the recommendations of the Finance Commission, the States receive grants-in-aid under Article 282. This Article provides *inter alia* that the Union may make any grants for any public purpose notwithstanding that the purpose is not one with respect to which Parliament may make laws. It is under this Article that assistance in the form of grants is given to the States for the purpose of carrying out Plan programmes. Such grants are made after taking into consideration the recommendations of the Planning Commission. Besides the grants under Article 282, assistance for Plan programmes is received by the States in the form of loans. We have no special comments to make on the provisions relating to the allocation of revenues and the grants-in-aid, under Article 275, made on the recommendations of the Finance Commission. Representatives of the States have invariably complained about the inadequacy of the quantum of such allocations. This, however, does not involve any question of principle or procedure with regard to the application of the above provisions. However, with regard to the assistance given for Plan schemes, under Article 282, considerable dissatisfaction has been expressed about the procedure involved. We have, in our report on the Machinery for Planning, suggested a simplification of the procedure, which would result in a greater measure of autonomy to the States in the selection of their programmes and to the lessening of the control by the Centre in this regard.

4. We give below the recommendations we have made in this respect in our report on the Machinery for Planning :

- (i) The amount of total Central assistance to be given to a State should first be determined. The amount to be given in the form of loans should then be worked out. The balance of the total assistance left after deducting the quantum of loans will be available for distribution as grants.
- (ii) A certain portion of the amount available as grant assistance should be 'tied' to schemes or groups of schemes of basic national importance. The remainder should then be distributed *pro rata* over other schemes or groups of schemes which are eligible for Central assistance.

- (iii) The grants tied to schemes or groups of schemes of basic national importance will not be available for re-appropriation. Grants originally allocated to untied schemes or groups of schemes may, however, be re-appropriated to other schemes qualifying for Central assistance.
- (iv) If there is a shortfall in implementation of State Plan taken as a whole and as a result the Central assistance utilized by the State is more than what would be proportionate to the expenditure met by the State out of its own resources (the correct proportion being one which was initially settled at the time of the finalisation of the Plan), there should be a corresponding reduction in the Central assistance. Necessary adjustment in this regard should be made after the close of the relevant financial year.
- (v) 'Miscellaneous Development Loans' should be abolished after the introduction of the scheme of Central assistance in the manner prescribed above.
- (vi) The number of Centrally sponsored schemes should be kept to the minimum and the criteria laid down for determining which projects should be Centrally sponsored should strictly be applied.

5. We are glad to note that in respect of the above recommendations, Government have decided as follows: After providing for the requirements of the States of Assam, Nagaland and Jammu and Kashmir, the Central assistance to the remaining States for the Fourth Plan will be distributed to the extent of 60 per cent on the basis of population, 10 per cent on their per capita income if below the national average, and 10 per cent on the basis of tax effort in relation to per capita income, and another 10 per cent in proportion to the commitments in respect of major, continuing irrigation and power projects, and the remaining 10 per cent being distributed among the States, so as to assist them in tackling certain special problems. There will be no schematic patterns and assistance will be given, through Block grants and loans. In order to ensure that the overall priorities of the Plan are adhered to, outlays under certain heads or sub-heads of development and specified schemes, will, however, be earmarked and will not be diverted to other heads of schemes. Government have also taken action to reduce the number of Centrally sponsored schemes in the Fourth Plan.

6. We had also recommended, in the said report, that with a view to giving full latitude to the States to order their development according to their needs and requirements, detailed sectoral planning, including preparation and execution of individual schemes and programmes, should be

left to the State Governments. Government have accepted this recommendation also.

7. We now deal with two further matters relating to plan assistance, which were not touched upon in our report on the Machinery for Planning, namely, (a) the steps to be taken to deal with the problem of mounting debts of the States to the Centre, and (b) the need for pre-determination of the principles on the basis of which grants should be given for Plan schemes.

8. The increased public spending for development and welfare activities has led to the heavy indebtedness of the States which has subjected their finances to considerable strain. The main reasons for this heavy indebtedness are as below :

- (i) Large-scale expenditure on schemes of benefit to the backward areas and classes has been incurred, but by their very nature these schemes cannot yield any monetary return, though they are essential for the building of the nation.
- (ii) The return on huge investments in public sector industries, irrigation and power projects is slow and inadequate because of their long gestation period.
- (iii) Other unexpected contingencies like famines and natural calamities have added to the financial liabilities of the States.
- (iv) In their anxiety to get a bigger plan, many States tend to overstate their resources and promise economies which are not susceptible of realisation.

The Study Team has referred to the increase in the size of the debt owed by the States to the Centre over the three Plan periods. Thus, the outstanding debt liabilities of the States to the Centre rose from Rs. 239 crores in 1951-52 to Rs. 4094 crores in 1965-66 and Rs. 5508.50 crores in 1968-69. The percentage of the loans received from the Centre to the Capital disbursements of the States which was as high as 77 per cent during the First Plan period shot up further to 89 per cent in the Third Plan period. The magnitude of the indebtedness of the States can be gauged from the following facts. According to the Budget estimates of 1968-69, the total revenue receipts of the States amount to Rs. 2775.91 crores and the total revenue expenditure Rs. 279.46 crores. The amount of loans from the Centre to the State Governments at the end of 1968-69 stands as Rs. 5508.50 crores. For example, in the case of Mysore against a total revenue of Rs. 194.74 crores in 1968-69, the repayment of loans to the Centre during that year amounts to above Rs. 26.80 crores in 1968-69. In the case of Tamil Nadu against a total revenue

of Rs. 248.28 crores in 1968-69, the repayment of loans to the Centre during that year amounts to Rs. 43.16 crores. In the case of Punjab, against a total revenue of Rs. 111.39 crores during 1968-69, the repayment of loans to the Centre during that year amounts to Rs. 18.99 crores. Besides, the States have taken other loans from the Public, Financial Institutions, and have other liabilities like unfunded debts. The large increase in loans has correspondingly increased the repayment obligations. However, as pointed out by the Study Team, in effect, the principal, and in some cases even interest, is repaid by taking fresh loans from the Centre. For example, the Central assistance to Mysore during the Fourth Five Year Plan period is proposed as Rs. 173 crores while the repayment of the existing loans over the same period will amount to Rs. 121 crores towards principal and approximately Rs. 67 crores towards interest charges. This has created in the States, according to the Team, a degree of indifference which makes them pay little heed whether the assistance they receive is in the form of loans or grants. Loans are given for Plan and non-Plan purposes, but the non-Plan loans do not present any insuperable difficulty for liquidation either by amortization or by repayment from the revenues, where necessary. For, the general purpose loans, like the share of small savings and ways and means advances, can be extinguished by amortization from revenue without the States having to curtail their normal activities. The loans utilised for re-lending to third parties can be paid out of the recoveries effected from the loanees. And the loans for other specific purposes, such as, assistance for national calamities, etc., form only a comparatively small portion except in abnormal circumstances. The problem, therefore, relates mainly to Plan loans. This has to be tackled from the point of view whether a modification in the creditor-debtor relation between the Centre and the States can be brought about.

9. The Study Team has referred to some drawbacks in the present scheme of financing State Plan expenditure through Central loans. Firstly, it has been assumed that a State alone derives all the benefit from development schemes, which are financed by the Central loans and that, therefore, the obligations to meet this expenditure should be hundred per cent that of the States. Secondly, no attempt is made to determine separately the gap between the revenue resources of the States and the revenue components of their Plan outlays and to cover the gap by revenue grant assistance. Thirdly, insufficient attention is paid to financial remunerativeness of the Plan schemes. In the quest for broad economic and social benefits, the need to secure maximum possible financial returns is overlooked. This accentuates the problem of repayment. Lastly, the repayment schedules are not related to the capacities of the schemes financed to yield returns.

10. After examining the problem in detail, the Study Team has made some suggestions for dealing with it. We have gone through these suggestions and would formulate an approach on the following lines. We agree with the Study Team that there should be a classification of schemes into productive and non-productive. The Planning Commission should as early as possible enunciate the principles for purposes of identifying productive and non-productive schemes. After all, whether a particular project is of a productive nature has initially to be decided by the Planning Commission itself when it is planning for the entire investment programmes in a plan period. What is essential is that definite principles should be worked out well in advance. These should receive the approval of the National Development Council. Only productive schemes should qualify for loan assistance. Schemes of repayment and rate of interest may be devised for the productive schemes so as to bring the payment of instalments and interest within the increased or specific earning capacity of the schemes. The States should endeavour to maximise the benefit out of the productive schemes and avoid running into difficulties in repayment. For this purpose, a Sinking Fund method for liquidation of the loans should be adopted. The assistance for capital schemes which are non-productive could be in the form of capital grants.

11. While the pattern of loan financing for Plan schemes for the future should be as described above, it will be necessary to make some special arrangements for lightening the burden of the heavy debt which has already accumulated on account of expenditure on Plan schemes. The Study Team has suggested that a comprehensive survey could be undertaken of the investments made by the different States with the help of Central loans and a realistic assessment made of the proportion of the outstanding loans which should be linked with productive assets. A repayment programme could be drawn up for these States for the productive part of the outstanding Central loans keeping in view the returns expected. For this purpose, the productive schemes could be classified into, say, commercial and industrial projects where the returns would be realised quicker and higher, agricultural schemes like irrigation projects where the returns will be slower and somewhat lower. When this is done, it will be possible to introduce a sinking fund method for the amortisation of loans for productive schemes. The burden of the remaining part of the debt for which no financial return can be expected may be apportioned between the Centre and the States and a method devised for writing it off over a period of time. Such portion of the outstanding debt, as has been utilized for re-lending to third parties, should, of course, be repaid by the States. The survey could be entrusted to an expert committee. Thus both for past and future loans which have to be repaid, a scheme of sinking fund should be worked out and implemented. The charges on account of this sinking fund should be taken into account in working out the budgetary position of the States during the Plan period.

Recommendation 3 :

We recommend :

- (1) **Loan for Plan schemes should be given only when they are of a productive type.** Whether a scheme is productive or not, should be decided by the Planning Commission in consultation with the Finance Ministry and other Central Ministries concerned.
- (2) **The repayment of productive loans should be made over a period of time, the States endeavouring to maximise the return on the investments and building up sinking funds for amortization of loans.** The timely payment of a proper rate of interest should be insisted upon.
- (3) **Assistance for non-productive capital schemes should be in the form of capital grants.**
- (4) **The problem of dealing with outstanding Central loans to the States for Plan schemes, as also the question of setting up of sinking fund for the amortization of debt, should be referred to a committee of experts.**

12. Assistance to States by the Centre, for financing Plan schemes, is by way of grants-in-aid as well as loans. Having made our recommendations regarding loan assistance we now consider grants-in-aid. Such grants for Plan schemes are made under Article 282 of the Constitution. This article, while enabling the Union to make grants for any public purpose, does not provide for the laying down of the principles which should govern such grants. In fact, when the Constitution was framed recourse to that Article for the purpose of making grants for the Five Year Plan schemes could not have been contemplated. Grants for schemes of development in the various States in accordance with the objectives of a National Plan call for the enunciation of well-defined principles, in the light of which such grants could be made. The Planning Commission does apply various criteria in determining the grants. However, as the Commission is a body established by the Central Government through an executive order, it has been urged that the principles governing the allocation of Plan grants should be enunciated by a different body created by law of Parliament, and the Finance Commission has been suggested in this connection. We are in agreement with this suggestion. Neither an amendment of the Constitution nor the passing of any special law is necessary for implementing this suggestion. Article 280(3)(c) of the Constitution lays down that it shall be the duty of the Commission to make recommendations to the President as to "any other matter referred

to the Commission by the President in the interests of sound finance." The Government of India when it appoints the Finance Commission can therefore make its terms of reference more comprehensive whenever necessary. Such matters have, in fact, been referred to the Finance Commission in the past. In this connection, we would also refer to the following statement of the Chairman of the Fourth Finance Commission :

"....The legal position therefore is that there is nothing in the Constitution to prevent the Finance Commission to take into consideration both capital and revenue requirements of the States in formulating the scheme of devolution and in recommending grants under Article 275 of the Constitution. But the setting up of the Planning Commission inevitably has led to a duplication and overlapping of functions to avoid which a practice has grown up which has resulted in the curtailment of the functions of the Finance Commission."

13. We, therefore, recommend that in future the Finance Commission may be asked to make recommendations on the principles which should govern the distribution of Plan grants to the States. In order that the Finance Commission may be able to make such recommendations, it will be necessary that it should have before it an outline of the Five Year Plan as prepared by the Planning Commission. The appointment of the Finance Commission will, therefore, have to be so timed that it will have before it this outline before it finalises its recommendations. While the principles governing the distribution of the Plan grants will be set out by the Finance Commission, the application of these principles from year to year will be left to the Planning Commission and the Government. In order that the Finance Commission's recommendations might be effectively coordinated with the Plan, a Member of the Planning Commission may be appointed to the Finance Commission. The Finance Commission may also include two persons, one Member having experience of Central finances and another Member having experience of the State finances. The members must be men of national stature commanding public confidence as provided in the Finance Commission (Miscellaneous Provisions) Act, 1951 as amended by the Finance Commission (Miscellaneous Provisions) Amendment Act No. III of 1955. The Secretariat of the Commission may continue to be provided by the Centre. The Unit in the Plan Finance Division of the Ministry of Finance at the Centre, which has made considerable headway in the collection and analysis of data relating to the State finances, may be strengthened. This Unit will form the nucleus of the Finance Commission's secretariat from time to time. Since the Finance Commission is a Constitutional body expected to be quasi-judicial, its recommendations should not be turned down by the Government of India unless there are very compelling reasons.

Recommendation 4 :

We recommend :

- (1) The Finance Commission may be asked to make recommendations on the principles which should govern the distribution of Plan grants to the States. The appointment of the Finance Commission may be so timed that when making its recommendations it will have before it an outline of the 5 year Plan as prepared by the Planning Commission.
- (2) The application of the principles governing the distribution of Plan grants from year to year will be left to the Planning Commission.
- (3) In order to secure effective coordination of the Finance Commission's recommendation and the Plan, a Member of the Planning Commission may be appointed to the Finance Commission.
- (4) The Finance Commission should include two persons, one having experience of financial administration at the Centre and the other having such experience in a State.
- (5) The Unit of the Plan Finance Division of the Ministry of Finance at the Centre may be strengthened. It should form the nucleus of the Finance Commission's secretariat from time to time.

14. Another serious problem that puts the financial resources of the State Governments to a great strain is the frequent rise in the emoluments of the State Government employees, consequent on the grant of increased emoluments to the Central Government employees by the Central Government. This increase in expenditure has become almost compulsory for two reasons :

- (i) Every time the emoluments of the Central Government employees are increased, the demand of State employees becomes vociferous reaching the levels of demonstrations and strikes. The State Governments are compelled to concede their demand to some extent every time the demand is made.
- (ii) The demand for such increases in emoluments in the form of D.A. and other allowances is based on the rise in prices and consequent increase of the cost of living. Fiscal policies and powers pertaining to them are solely within the responsibility of the Central Government. Inflation and connected economic difficulties are the responsibility of the Central Government to solve

We think that the Central Government cannot reasonably plead that it is not their responsibility to meet the increased expenditure of the States in this behalf. In fact, it is the policies of the Central Government that are responsible for inflation and increases in prices and the cost of living. It, therefore, follows that the Central Government must share the burden of this increased expenditure. The Finance Commission will have to take into consideration not only the already committed expenditure, but also the definitely foreseeable expenditure on this account in making allocation of resources.

Recommendation 5 :

We recommend :

The Finance Commission should take into consideration the problem of granting increased emoluments to the State Government employees on account of increase in the cost of living, while making allocations of resources to the States.

15. Loan assistance is given by the Central Government to the States to cover their overdrafts with the Reserve Bank. The gap between the incomings and the outgoings of the revenues of the State Government results in overdrafts. The overdrafts are sometimes seasonal when revenues fall short of expenditures. Sometimes these are occasioned by unexpected events and contingencies like natural calamities or purchase of food stocks for creation of buffers, etc. In some cases, wilful overdrafts are resorted to by the States undertaking programmes in the full knowledge that the requisite resources are not available. If our recommendations are properly implemented, we feel that the problem of overdrafts will not arise.

16. It has been suggested, in some quarters, that the Finance Commission should be appointed as a permanent body. We have already stated in our report on the Machinery for Planning that we are not in favour of the appointment of a permanent Commission. A permanent Finance Commission will lead to almost daily dialogues and demands by the States. This will not be conducive to the climate necessary for such a body to formulate its recommendations unhurriedly. Incidentally, a permanent Commission will mean increased expenditure to Government on staff and connected items. The appointment of the Finance Commission to synchronise with the commencement of the Plan period will enable that Commission to take an overall view of the requirements of the States and formulate principles governing the distribution of funds. This will be sufficient to do justice to the States' point of view. Regarding inescapable liabilities that arise subsequent to the awards of the Finance Commission, the National Development Council which meets often, can deal with the question and resolve the difficulties that arise.

17. In this context, we would emphasise that the States cannot expect Central resources to be made available to them in order to compensate them for their unwillingness to tap their own resources to the required extent. Some of the State Governments are very chary of levying taxes and rates on those who are direct beneficiaries of heavy investments made by the Government on big projects, like irrigation and power projects, and on whom the levy of such taxes and rates will not become a great burden. To refrain from making such levies, under the wrong notion that they will lead to unpopularity, will only result in unequal and unjust treatment being meted out to different classes or groups of persons in the State. While the State Government must, no doubt be anxious to increase the tempo of development in their States, they must be equally keen on maximising the revenues from the development projects.

Recommendation 6:

We recommend :

The State Governments should adequately tax the direct beneficiaries of the heavy investments in big projects like the Irrigation and Power projects.

CHAPTER IV

ROLE OF THE GOVERNOR

1. A public controversy has recently arisen in the field of Centre-State relationships over the appointment of Governors, their powers and functions. For the first two decades after Independence, the office of the Governor did not give room to controversy, the main reason being that a single party, *viz.*, the Congress Party, was in power, both at the Centre and in almost all the States, and its dominating leadership at the Centre facilitated smooth management of affairs involving Centre-State relations. This picture of political homogeneity underwent a radical change in the wake of the General Elections of 1967. The heterogeneous political spectrum that emerged ranged from the Communist Parties at the one end to the Swatantra and the Jan Sangh parties at the other. At the Centre, the Congress Party, though depleted in strength, has continued to be in power. However, in the States, it was in power only in eleven of the, while the non-Congress parties had formed ministries, in the remaining six States. Of the latter ministries, five were multi-party ministries. The differences in the ideologies and objectives of the political parties in power have become a source of friction in the Centre-State relationships in various matters including the appointment and the role of the Governor.

2. The Governor is the constitutional head of the State, acting on the advice of his Ministry. He does not himself directly discharge executive functions. He is, however, required to exercise his discretion in certain circumstances which are either explicitly stated in the Constitution or can be inferred therefrom. Till recently, in view of the existence of political harmony between the Centre and the State Governments, there was hardly any occasion for him to play an active role by exercising these discretionary powers. He was concerned mostly with the discharge of formal functions like the swearing-in of Ministers, addressing the legislature at the commencement of sessions, and gracing official functions with his presence. This predominance of the ceremonial and the formal in the functions discharged by him has prompted some people even to question the need of the institution of Governor, which appeared to them to be a costly superfluity.

3. The above position has, as already stated, changed since 1967. Baffling problems of a nature hitherto unforeseen arose in the working of

the Constitutional provisions relating to the role of the Governor and the functioning of legislatures. A figure-head role for the Governor could hardly be feasible in the situations created by the problems. The difficult situations that arose in some of the States are briefly described below:

- (i) *West Bengal* : In West Bengal, the Governor was confronted with the question as to whether or not the Chief Minister enjoyed the confidence of the Assembly. The Chief Minister would neither resign, nor seek a vote of confidence, nor would he agree to the advice of the Governor for an early summoning of the Assembly to have the support enjoyed by the Ministry ascertained beyond doubt. The Ministry was, therefore, dismissed by the Governor. After the Ministry was dismissed and a new one sworn in, the Governor summoned the Assembly on the advice of the new Chief Minister. When the Assembly met, the speaker took the extraordinary step of adjourning the Assembly *sine die* on the ground that the action of the Governor in dismissing the previous Ministry and swearing-in of the new Ministry and the summoning of the Assembly was unconstitutional. The Calcutta High Court, however, upheld the action of the Governor. When the Assembly was again summoned, the Speaker again adjourned the Assembly without allowing it to transact any business.
- (ii) *Bihar* : In Bihar, the Council of Ministers openly expressed its unwillingness to accept the person appointed by the President as Governor. A controversy arose as to the extent to which the Chief Minister should be associated with the choice of a person to be appointed as Governor. Further, the political situation in Bihar underwent many changes calling for the exercise of the judgment of the Governor repeatedly in regard to the appointment of the Chief Minister and the functioning of the Ministries.
- (iii) *Punjab* : In Punjab, in the course of a discussion, during the Budget Session, of a motion expressing lack of confidence in the Speaker, the Assembly was adjourned by him for two months, with the result that the Budget could not be discussed and the Appropriation Bill could not be put to vote. This resulted in the commencing month of the next financial year being left without provision for expenditure. An embarrassing deadlock was thus created. The Governor of Punjab thereupon promulgated an Ordinance to enable the Assembly to meet and to consider the Appropriation Bill. When the Assembly was summoned by the Governor, the Speaker

created a further deadlock by ruling that the summoning of the House was illegal, and re-affirmed his earlier decision adjourning it for two months. When he left the House, which was in a state of pandemonium, the Deputy Speaker occupied the Chair, put to vote the Appropriation Bill and declared it as passed. This was subsequently declared *ultra vires* by the High Court, creating further administrative and constitutional problems. The matter went in appeal before the Supreme Court, which upheld the action of the Governor.

- (iv) *Rajasthan* : The Governor, after the 1967 General Elections in the State of Rajasthan, was faced with the question as to which political party or group in the legislature enjoyed majority and should be called upon to form the Ministry. Neither party or group would concede the position of majority to the other. After his own assessment of the position, the Governor invited the Leader of the Congress party in the legislature to form the Ministry. But when this leader declined the invitation, President's rule was imposed, but the Assembly was not dissolved. The combined opposition of all non-Congress parties paraded their members before the President to establish their claim of majority. This method of parading of MLAs before the President was adopted for the first time in India. But, when the lists of MLAs of respective groups were called for by the Governor, it was found there were 21 names common to both of them. The Governor then arranged to meet the MLAs, whose allegiance was uncertain, to find out their party affiliation. He ultimately found the Congress party in a majority and, on his advice, President's rule was withdrawn and the leader of the Congress party, who was invited formed the Ministry.
- (v) *Madhya Pradesh* : In Madhya Pradesh, the Chief Minister had to resign on account of political defections. He advised the Governor to dissolve the Assembly. The Governor did not accept the advice and called upon the person who, in his judgment, commanded the majority support of the Assembly to form the Ministry. Later, another Chief Minister, appointed by the Governor, held office only for 13 days and submitted his resignation, as he did not command the majority in the Assembly. He also advised the Governor to dissolve the Assembly, though it had not been summoned to meet. This advice was not accepted by the Governor. In this case also, the Governor had again to appoint, as Chief Minister, another

person who had, in his opinion, the majority support in that Assembly.

- (vi) In some States the law and order situation was adversely affected by the deliberate acts of omission and commission of Ministries concerned.

4. Thus, in the changed context, the Governor's office ceases to be merely ornamental and ceremonial. The Governor has to face situations in which he will have to take decisions, in keeping with his oath of office to "preserve, protect and defend the Constitution and the law". His character, calibre and experience must be of a high order, so that he may be able to stand up to the needs of a new situation with confidence. His discretion and judgment should be exercised in such a way that a happy relationship between the Centre and the State is ensured. As Head of the State, he should, free from political predilections and prejudices, hold the scales even between party and party, and, by his impartiality and sense of fair-play, command the respect of all parties in his State. He must have firm faith in the Constitutional set-up and the democratic institutions. He should necessarily have rich experience in public life and administration. Such are the requirements to be looked for in a person who is to be appointed as a Governor.

5. During the British regime, Governors were appointed from amongst the senior members of the Civil Service and persons well-known in British public life. The Governors of Madras, Bombay and Bengal used to be eminent persons from public life in the United Kingdom. The rest of the provinces had, as Governors, senior ICS officers who has served as Executive Councillors of the Governor-General. After Independence, the practice of appointing Governors from public life and from Services continued with the larger number of appointments being made from public life. Objections have been raised, at times, to the appointment of retired senior civil servants as Governors. However, what really matters is the type of the person that is appointed and not the source from which he is selected. Preference has, of course, necessarily to be shown to persons eminent in public life, as their experience in public affairs as well as administration would be of great utility in discharging the functions of the Governor in the changed context. In passing, we may state that there is a widespread feeling that in some cases Governors were appointed on considerations extraneous to merit. When persons defeated in elections are, shortly thereafter, appointed as Governors, the worth and dignity of the office greatly suffers. We are also of the view that judges, on retirement, should not be appointed as Governors, the reason being that judicial independence should not be compromised by exposure of the judges to temptations of securing high executive offices. However, since previous experience of public affairs is an essential prerequisite for the office of the

Governor, a judge who enters public life on retirement and becomes a legislator or a Minister or holds other elective office may not be considered ineligible for appointment as a Governor. A person should not be appointed as Governor for more than one term. Such a restriction is necessary in order to safeguard his independence and impartiality against being jeopardized by expectations of patronage.

Recommendation 7:

We recommend :

A person to be appointed as a Governor should be one who has had a long experience in public life and administration and can be trusted to rise above party prejudices and predilections. He should not be eligible for further appointment as a Governor after the completion of his term. Judges, on retirement, should not be appointed as Governors. However, a Judge who enters public life on retirement and becomes a legislator or holds an elective office may not be considered ineligible for appointment as Governor.

Method of appointment of the Governor

6. Under the Constitution, the Governor of a State is appointed by the President and holds office during the pleasure of the President. In the very nature of things, the Governor has a two-fold responsibility. He is the Head of the State acting on the advice of his Council of Ministers. At the same time, he is a link between the Centre and the State. He submits reports to the President periodically on the administration and also, when necessary on the difficulties or crises which arise in the working of the Constitution. A convention has grown of consulting the Chief Minister of the State before a person is appointed by the President as a Governor. Though there is nothing in the Constitution which makes such prior consultation obligatory, we consider that the convention which has grown in this regard is a healthy one and may be continued. To deliberately select as Governor a person who is not acceptable to the Chief Minister would not be a promising start. As the Centre has to ensure that the State Government is carried on in accordance with the provisions of the Constitution, the person with whose help this obligation can be discharged, viz., the Governor, should be one enjoying the confidence of the Centre. In short, the person selected as Governor should be able effectively to discharge the two-fold function of sustaining harmonious relationship between the State and the Centre, while, at the same time, playing the role of a friend and guide to his Council of Ministers.

Recommendation 8:

We recommend :

The convention of consulting the Chief Minister before appointing a Governor is a healthy one and may continue.

Discretionary powers of a Governor

7. Article 163 of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the Constitution, required to exercise his functions or any of them in his discretion. The Constitution lays down that the Governor is the sole judge in determining what does and does not fall under his discretion. It vests in the Governor considerable discretionary powers. In the light of the new developments and complicated situations, a clear enunciation as to the method and manner of exercise of discretionary powers by the Governor is necessary. As the discretionary powers of the Governor affect some of the vital issues in the functioning of democratic governments in the States, some guidelines should be evolved to enable exercise of these discretionary powers by the Governor for the purpose of preserving and protecting democratic values. Though the possibilities of the Governor abusing these powers are extremely remote, still we feel that such guidelines are necessary to secure uniformity of action and eliminate all suspicions of partisanship or arbitrariness. Though the Constitution does not provide for the issue of any Instrument of Instructions, there seems to be no bar to agreed guidelines being issued. The guidelines must command general acceptance. The proposed Inter-State Council would consist of the representatives of the Central Government, State Governments and of the Opposition in Parliament. This would be an appropriate body to discuss and formulate the guidelines. They may thereafter be accepted by the Union Government and issued in the name of the President. The guidelines so issued may be placed before both Houses of Parliament.

Recommendation 9:

We recommend :

Guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and on acceptance by the Union issued in the name of the President. They should be placed before both Houses of Parliament.

Role of the Governor in an emergency

8. When an emergency overtakes a State, the Governor's role becomes one of pivotal importance. Article 355 of the Constitution provides that it shall be the duty of the Union to protect every State against external aggression and internal disturbance, and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. One type of emergency arises when the security of India or any part of its territory is threatened, whether by war, external aggression or internal disturbance. Article 352 of the Constitution provides that the proclamation of emergency in such a situation may be made before the actual occurrence of war or of external aggression or internal disturbance if the President is satisfied that there is imminent danger thereof. In a situation of emergency, the State administration comes virtually under Central supervision and control, and the power of Parliament extends to making laws, conferring powers and imposing duties or authorising such conferment upon the Union or officers and authorities of the Union, notwithstanding that the subject is one which is not enumerated in the Union List.

9. Another type of emergency situation arises if the President, on the receipt of a report from the Governor or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. In such a situation, the President assumes to himself all or any of the functions of the State Government or all or any of the powers vested or exercisable by the Governor or any body or authority in the State, other than the Legislature of the State, or declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. This excludes, however, the powers vested in or exercisable by a High Court.

10. A third type of situation arises when the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part of the territory thereof is threatened. During the period of such an emergency, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions and to the giving of such other directions as the President may think necessary and adequate for the purpose.

11. In all such cases, it is essential for the Centre to be adequately informed of the developments and events in the State and the manner in which the Government of the State is being carried on. That the question is one of practical importance can be gathered from the fact that during the period of nineteen years, during which the Constitution has been in

force, President's rule has been promulgated on as many as sixteen occasions in different States. The Constitution lays down that it is the function of the Governor to report to the President from time to time. The Governor writes fortnightly letters to the President and sends a copy to the Chief Minister. Occasions may arise when the Governor considers it necessary to make reports to the Centre in addition to fortnightly reports. We are of the view that Governor should make *ad hoc* reports to the President as and when the need arises.

12. In making the reports to the President, the Governor must act according to his own judgment. However, we assume that in such cases, as far as possible, he will take his Chief Minister into confidence, unless there is some matter in which there are some over-riding reasons to the contrary. Also, we think that, before he makes a report about a threatened emergency, the Governor should have exhausted his own right to advise, and warn so that his Ministry would have no grievance that it has been kept in the dark.

13. (Another discretionary area of the Governor's functions relates to the reservation of Bills passed by the Legislature of the State for the consideration of the President. We feel that the Governor should reserve the Bills for Presidential consideration only in special circumstances such as those in which there is clear violation of some fundamental rights or a patent unconstitutionality. Presidential intervention would also be required in the event of conflict with the Central Law. He has thus to act according to his judgment and the question whether the particular Bill does or does not require to be reserved for the President must be determined by him in accordance with the contents of the legislation concerned.)

Recommendation 10 :

We recommend :

(The Governors, besides sending the fortnightly reports to the President should make *ad hoc* reports as and when the need arises. He must act according to his own judgment and discretion in making such reports to the President and also in regard to the reservation of Bills for the consideration of the President.)

14. Article 164(1) of the Constitution lays down that the Chief Minister shall be appointed by the Governor and the other Ministers will be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor. (The appointment of the Chief Minister, thus, lies, under the Constitution, in the discretionary area of the Governor. However, the Governor has no option except to invite the leader of the party or combination of the

parties commanding a majority of the members of the Assembly to form the Ministry. Where, however, it is not absolutely clear whether any party or combination of parties has a majority, the Governor should exercise his judgment in deciding on the choice of the person commanding the majority support of the Assembly.

15. Under Article 164(1) of the Constitution, the Chief Minister and the other Ministers hold office during the pleasure of the Governor. The 'pleasure' of the Governor has recently been explained in a judgment of the Calcutta High Court. It has been held by that Court that the discretion of the Governor under Article 164(1) of the Constitution to dismiss the Ministry cannot be called in question. Article 164(2) of the Constitution provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. The Governor can dismiss the Ministry, once formed, only when the Ministry has lost the confidence of the Assembly. If a doubt arises whether a Ministry has the confidence of the majority in the Assembly, the wisest course would be to have it settled by summoning the Assembly and to leave to the Assembly the verification of the support claimed by the Ministry.

16. The Governor normally summons the Legislature of the State on the advice of the Chief Minister. A situation may, however, arise where the Chief Minister, who appears to have lost majority support in the Assembly, may be reluctant to summon it and at the same time unwilling to resign. In such a situation, the question arises as to whether the Governor can summon the Assembly even if the Chief Minister advises to the contrary. We suggest that the Governor should try to persuade the Chief Minister to agree to the Assembly being summoned as early as possible and to face it. If the Chief Minister still refuse to agree to advise the summoning of the Assembly, the Governor should summon the Assembly for the purpose of obtaining its verdict on the question as to whether the Council of Ministers enjoys the confidence of the Assembly.)

Recommendation 11 :

We recommend :

When the Governor has reason to believe that the Ministry has ceased to command a majority in the Assembly, he should come to a final conclusion on this question by summoning the Assembly and ascertaining its verdict on the support enjoyed by the Ministry. When a question arises as to whether the Council of Ministers enjoys the confidence of the majority in the Assembly, and the Chief Minister does not advise the Governor to summon the Assembly, the Governor may, if he thinks fit, *suo motu* summon the Assembly for the purpose of obtaining its verdict on the question.)

17. Under Article 168 of the Constitution, the Governor is a part of the Legislature. Under Article 174, he shall, from time to time, summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit. The Rules of Procedure and Conduct of Business in the Legislature should be such as to allow the exercise of this power by the Governor given to him under the Constitution without being defeated or frustrated. We have already referred to the instance of the Speaker of the West Bengal Assembly adjourning the Assembly summoned by the Governor without allowing it to transact any business. Similar difficulties were also created in Punjab by the Speaker of the Assembly. The Speakers' actions in these cases resulted in administrative and constitutional deadlocks. Such actions of the Speaker result in impeding the smooth functioning of the Legislature in accordance with the provisions of the Constitution. It is, therefore, essential to ensure that the Governors constitutional powers in his discretion should not be set at naught by the Speaker acting contrary to the provisions of the Constitution. Prior to the 1967 General Elections, there was no instance of a Speaker acting in the way the Speaker of Punjab and the Speaker of West Bengal acted. These two instances have created an apprehension that a Speaker here or there may repeat the performance. We are, therefore, of the opinion that provision must be made so as to prevent the recurrence of such cases in future. It has been suggested that the remedy is either to empower the Governor, or for the Legislatures to frame rules to meet such a situation. It is, however, contended that empowering the Governor to control the Speaker will be an undesirable step, militating against the basic principle of separation of powers between the Executive, the Legislature and the Judiciary. We agree with this view. We, therefore, suggest that the legislatures in India should, of their own motion, amend the Rules of Procedure for the Conduct of Business so as to provide for contingencies referred to above. A way out has to be found and it has to be left to the legislatures themselves to provide an effective remedy. In the last resort, where the processes of the Legislature fail to ensure that the Government of the State is carried on in accordance with the provisions of the Constitution, Article 356 may be invoked.

Recommendation 12 :

We recommend :

Where functionaries like the Speaker act arbitrarily and prevent the functioning of legislatures, effective remedies must be devised by the legislatures themselves by way of formulating rules of business which would enable the legislature to transact the business for which it was called into session.

18. Article 174 (2) (b) of the Constitution empowers the Governor to dissolve the Legislative Assembly. The dissolution of the Assembly may be on the recommendation of the outgoing Chief Minister or in special circumstances at the discretion of the Governor. In the former case, the Governor should exercise his discretion in deciding whether or not he should accept the recommendation of the Chief Minister for the dissolution of the Assembly.

19. A Ministry should normally resign when it is defeated in the Assembly on a major policy issue. If, for any reason, the outgoing Ministry feels that it has to make an appeal to the country as against the verdict of the Legislature on that issue, it has the right to make that appeal to the country. The right has been enjoyed by the Prime Minister in the United Kingdom. This right to appeal to the country is a basic right of a Chief Minister. At the time he advises the Governor to dissolve the Assembly and to hold a fresh election, the point to be considered is whether the people who are the ultimate masters of both the Legislature and Government should or should not be approached for decision on crucial and important matters of policy.

20. This right has not yet been fully recognised in India. A great deal of criticism has been voiced on the floor of the Parliament on this issue. In order to make an appeal to the country by holding an election on matters of policy, the Chief Minister has this right so far as the State Assembly is concerned, and the Prime Minister has it so far as the Lok Sabha is concerned. This position must be clearly understood and acted upon in order to ensure smooth working of the system of Government we have adopted under the Constitution. If the recommendation for dissolution is made with a view to obtaining the verdict of the electorate on a major policy issue on which the outgoing ministry has suffered defeat, the Governor should accept the advice of the outgoing Chief Minister. In other cases, the Governor should use his discretion to decide whether he should accept the advice of the Chief Minister or not.

Recommendation 13:

We recommend:

When a Ministry is defeated in the Assembly on a major policy issue and if the outgoing Chief Minister advises the Governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the Governor should accept the advice. In other cases, he may exercise his discretion.

21. Sometimes it is said that the Centre brings pressure to bear upon the Governor to act in a particular way in a given situation. The Central Government being also a party-government, such actions on its part will

naturally not appear impartial to other parties forming Governments in some of the States. In advising Governors, the Centre should exercise its power in such a way that it does not give room for other parties to feel aggrieved. But, in cases where internal and external security and the safeguarding of democratic institutions are involved, the President has the responsibility to see that the Governor acts firmly and without hesitation so as to preserve the unity and integrity of India and the democratic system devised by the Constitution.

22. In order that a Governor should discharge his functions effectively, it is necessary that he should keep himself well-informed. Article 167 of the Constitution casts the duty on the Chief Minister to communicate to the Governor all decisions of the Council of Ministers on the affairs of the State and proposals for legislation and to furnish the information pertaining to these called for by the Governor. Governors should not only receive certain categories of information in the usual course, but should actively look for information relevant to their duties and functions. Chief Ministers and other Ministers should not stand in the way of flow of information to the Governor.

Recommendation 14:

We recommend:

The Governor should not only receive information as provided for in Article 167, but should also actively look for it with a view to discharging his constitutional responsibilities effectively.

CHAPTER V

INTER-STATE COUNCIL AND INTER-STATE WATER DISPUTES

1. Inter-State and Centre-State differences necessitate frequent consultations and discussions for reaching acceptable solutions. There are, at present, bodies like the National Development Council and Zonal Councils for such consultations and discussions of problems of mutual interest. There are also other *ad hoc* or standing arrangements made by different organs of the Central Government. The Central and the State Governments should take full advantage of the various forums for Inter-State or Centre-State discussions and both should make earnest efforts to come to an adjustment on the issues that divide them. In that case, many of the problems that later assume large dimensions or magnitude can be solved at an earlier stage when they do not become clouded by public controversy. When any issue of substantial or serious controversy crops up in the relations between them, it is elementary wisdom that both should avoid entering into a public controversy or discussion over them. A word uttered in public is not capable of recall, but the one uttered in discussion it is possible to review and reconsider. The matter then does not become one of prestige, but remains one which it is possible to settle by mutual discussion. A matter ventilated in public is also apt to become the subject of emotional appeal and does often rouse or even inflame public opinion. This is hardly conducive to the creation of understanding.

Recommendation 15:

We recommend:

The Inter-State or Centre-State differences should be settled by mutual discussions. To the extent possible, these discussions should be held in camera. Only the decisions may be issued in the form of statements.

2. Article 263 of the Constitution provides for the setting up of an Inter-State Council for—

- (a) inquiring into or advising upon disputes which may have arisen between States;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or

- (c) making recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

Almost all the persons, including those from the Opposition parties, who appeared before us, stated that in the altered political scene after 1967 General Elections, an Inter-State Council was necessary to discuss problems relating to Centre-State relationships. During the last two decades, no such demand was made by political parties or Chief Ministers because many of the problems were discussed and settled at informal meetings between the Chief Ministers and the Prime Minister or between the ministries of the States and the Central Government. Even now informal and *ad hoc* conferences are held for discussing and resolving the points of disputes. However, these informal conferences have not fully satisfied the concerned parties. The feeling persists that these conferences do not lead to effective and precise discussions.

3. Apart from constitutional and administrative necessities, in matters of Inter-State relationship, a responsive attitude is more conducive to smooth working than a rigid one, however justified it may be. The current tendency is to exaggerate the difficulties of inter-State problems so as to focus public attention on them. This has led to public controversies conducted in an acrimonious manner and generating rigid attitudes between State and State or the Centre and the States. The establishment of an Inter-State Council would be conducive to better understanding, thereby minimising the present trend of accentuation of the differences. It would, moreover give concrete shape to the responsive attitude of the Union Government in meeting the views of the opposition political parties..

4. The Study Team has recommended that the Council may consist of the Prime Minister, certain Union Ministers and the Chief Ministers and others who may be co-opted. The total number of members, by such a composition, would be too large. In fact, it would be a replica of the National Development Council. It will also be similar to an *ad hoc* meeting of the Chief Ministers. Multiplication of Councils with the same composition would not serve the purpose for which the Inter-State Council is intended. In order to carry on effective, confidential and cooperative discussions and to make formal recommendations, the Council must be compact and so constituted as to endow its deliberations with high authority. The Council's decisions, though advisory, must be able to carry weight with the Centre and the State Governments.

Recommendation 16:

We recommend:

- (1) An Inter-State Council should be constituted under Article 263 of the Constitution.

(2) It may consist of—

- (i) the Prime Minister—Chairman**
 - (ii) the Finance Minister**
 - (iii) the Home Minister**
 - (iv) the Leader of the Opposition in the Lok Sabha (when one is not available, a representative should be elected by the Opposition parties by single transferable vote)**
 - (v) five representatives, one each from the five zonal Councils.**
- (3) Any of the Union Cabinet Ministers or Chief Ministers who may be concerned with a particular subject, may be invited for discussion when the relevant subject is under consideration.**
- (4) The proceedings of this Council must be secret.**

(3) Any of the Union Cabinet Ministers or Chief Ministers who may Constitution. That Article provides, *inter alia*, that the Council may be charged with the duty of investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest. The phrase ‘common interest’ is so comprehensive that it may be construed to cover problems relating to or arising out of the Constitution, legislative enactments, administration and finance. We need not attempt to detail these problems. However, the Council will naturally not deal with matters within the purview of the National Development Council and such matters as the Prime Minister may decide to refer to the full-fledged Chief Ministers’ Conference. Matters which can more appropriately be discussed in *ad hoc* conferences of Ministers, e.g., Food Ministers’ Conference, Education Ministers’ Conference, need not come up before the Council.

6. The Inter-State Council being a new body, its usefulness has to be judged by the experience of its working. We do not envisage at this stage a permanent Inter-State Council. The Inter-State Council may, to begin with, be set up for a period of two years. A decision may be taken for its continuance in the light of the role it plays, its performance and achievements.

Recommendation 17 :

We recommend :

- (1) The Inter-State Council will have the functions indicated in Article 263 of the Constitution.**

(2) The Inter-State Council may be set up, to begin with, for a period of two years. A decision may be taken on its continuance in the light of experience gained.

7. While dealing with Inter-State Water Disputes, the Study Team has observed that adequate legal and administrative arrangements should exist for the settlement of such disputes and has recommended, among others, that the inter-State Water Disputes Act, 1956, should be amended to—

- (a) provide for compulsory arbitration by a tribunal in the event of failure of negotiations by—
 - (i) providing a time limit of three years for mediation by the Centre from the date of receipt of an application from a State for the reference of a dispute to an arbitral tribunal; and
 - (ii) compulsory reference of the dispute to such a tribunal upon the expiry of this time limit;
- (b) oust the jurisdiction of the courts altogether;
- (c) provide for a three-member, instead of a single member, tribunal, the chairman being selected by the Chief Justice of India from among judges of a High Court or judges or ex-judges of the Supreme Court, and the other two members being appointed by Government. By convention, the Chairman should select the two members from a panel prepared by government; and
- (d) empower the tribunal to set up a fact-finding commission.

The Inter-State Water Disputes Act, 1956, has already been amended in 1968 to provide for a three member tribunal, all of them nominated by the Chief Justice of India from among persons, who, at the time of such nomination, are judges of the Supreme Court or High Court. We agree with the Study Team that there should be a time limit for mediation; this time limit may be three years reckoned from the date when a dispute arises..

Recommendation 18 :

We recommend :

A time limit of three years may be prescribed for settlement by mediation of any Inter-State Water Dispute reckoning from the date the dispute first arises and on the expiry of the time limit the dispute shall be referred to compulsory arbitration by a tribunal.

CHAPTER VI

THE PROBLEM OF LAW AND ORDERS

The relations between the Centre and the States in the field of law and order have generated acute controversy in recent months. Under the Constitution, public order (but not including the use of naval, military or air-forces or any other armed forces of the Union in aid of the civil power) is a State subject —vide item 1 of the State List in the Seventh Schedule. The use of naval, military or air-force or any other armed forces of the Union in aid of the civil power is—vide item 2 of the Union List in Seventh Schedule—a Central function. It is for the Centre to decide, whether any assistance in aid of civil power should be provided through the use of regular forces normally available for defence or through any armed police forces of the Union. The Central Reserve Police and the Border Security Force are armed forces raised by the Union to meet the needs of the security of the country, both external and internal. In the circumstances, the use of the armed police forces of the Union in aid of the civil power of a State is perfectly constitutional. It is also clear that such aid can be provided at the request of the State Government or *suo motu*. The question whether such aid is needed must obviously be a matter of judgment by the Centre. This is also consistent with Article 355 of the Constitution. The intervention of the Centre in aid of the civil power on its own initiative cannot be restricted to a threatened emergency under Article 352. Likewise, the location of its armed forces, whether military or police, in different parts of India must be a matter for Central discretion. In determining this location, the Centre has to take into account several factors, as, for example, the security aspect of the country, the facilities available for the movement of these forces to meet certain contingencies and certain situations. We, therefore, do not think that there is any validity in the objection which certain State Governments are reported to have taken to their location within their areas. We also agree that there is no bar to their being used for Central purposes as, for example, protection of central property or central staff or for the protection of works in which the Centre has interest or which can become the objects of sabotage, etc., organised by agents of a foreign power.

Recommendation 19 :

We recommend :

- (1) The use of the naval, military or air force or any other armed forces of the Union in aid of civil power can be made either

at the instance of the State Government or *suo motu* by the Centre.

(2) The Centre may exercise its discretion to locate such forces in the States and to deploy them for maintaining public order for purposes of the Centre, such as protection of central property, central staff, and works in which the Centre has an interest.

2. We now come to the question of issue of directions by the Centre to the States. Article 256 of the Constitution provides that the executive power of the State shall be exercised so as to ensure compliance with Parliamentary legislation and any existing law applying to that State and that the Union could issue direction to a State which may appear to the Government of India necessary for this purpose. Article 257 provides that the executive power of every State shall be exercised in such a manner as not to impede or prejudice the exercise of the executive power of the Union (obviously even the subjects in the Concurrent List are covered) and the Union is entitled to issue directions to a State as may appear to be necessary for this purpose. Similar powers of issuing directions are available to the Union in regard to construction and maintenance of communications declared to be of national or military importance as distinct from national highways or national waterways. This is in addition to the powers of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air-forces works. Similar powers of directions are also available in regard to measures to be taken for the protection of the railways within the States. Article 365 provides that where a State defaults in complying with any directions given in the exercise of the executive power of the Union on the above-mentioned matters, the President may declare that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The emergency provisions of Article 356 applicable in case of failure of constitutional machinery in the States can then be brought into force.

3. Thus the consequence of disobedience or non-compliance with the directions of the Centre by a State is the assumption of the governance of the State by the President. The issue of direction by the Centre to a State is therefore an extreme step and should be taken only in cases of absolute necessity, which no other means of securing the objectives are available. The assumption of governance by the President is a drastic medicine prescribed in the Constitution as a last resort, which cannot be administered as daily food as a matter of course. Short of the use of the extreme measure of issuing directions, other suitable remedies should be devised for achieving the purpose. Even though due to differences in ideologies or programmes, and in approach and outlook, it is likely that occasions for points of conflict arising may be more frequent, matters should as far

as possible be settled by means other than that of issuing directions to the States. We are also not in favour of establishing alternative machinery for ensuring compliance with the Central Government's orders by the State Government or for the running of its writ without resorting to or making use of the State Government's machinery. This will not only entail enormous increase in expenditure, but also act as a constant irritant between the Central and State authorities.

Recommendation 20 :

We recommend :

Before issue of directions to a State under Article 256 the Centre should explore the possibilities of settling points of conflict by all other available means.

CHAPTER VII

SOME IMPORTANT INSTITUTIONS HAVING A BEARING ON CENTRE-STATE RELATIONSHIPS

We take up for consideration the institutions for ensuring standards of public administration, like the High Courts, Public Service Commissions, Election Commission and the All-India Services, which affect Centre-State relationships.

2. Article 217 of the Constitution requires that the appointment of a High Court Judge be made by the President, after consultation with the Chief Justice of India, the Government of the State concerned and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the Court. A Memorandum of Procedure has been drawn up with a view to fulfilling this requirement. Under the procedure, the Chief Justice of the High Court initiates action by sending to the Chief Minister his views as to the person to be selected. The Chief Minister, in consultation with the Governor, forwards his recommendation to the Union Minister of Home Affairs. When the Chief Minister or the Governor proposes to recommend a person different from the one suggested by the Chief Justice the latter is informed accordingly and his comments are invited. These comments are forwarded to the Union Ministry of Home Affairs along with the Chief Minister's original communication to the Chief Justice. The Minister of Home Affairs, in consultation with the Chief Justice of India and the Prime Minister, advises the President as to the selection. A similar procedure is observed with regard to the appointment of Chief Justice except that the recommendation in that case originates from the Chief Minister.

3. The Study Team, after examining the existing procedure for the appointment of High Court Judges, has suggested that:

- (i) Article 217 should be amended so as to dispense with the need to consult the Governor in the appointment of Judges.
- (ii) The Memorandum of Procedure should be so amended that (a) while it should be open to the State Government to express its own opinion on a name proposed by the Chief Justice, it should not be open to it to propose a nominee of its own, and (b) that the State Government in the light of its comment on the Chief

Justice's proposal may suggest that the Chief Justice make another proposal, but the suggestion should not be binding.

We are unable to agree with the Study Team, whose proposal, if accepted, would drastically restrict the role of the State Government in the selection of High Court Judges. The existing Article 217 balances the right of the State Government and that of the Union Government. As a precaution against the abuse of its power by the State Government, consultation with the Chief Justice of India has been made obligatory. The present procedure has worked satisfactorily on the whole. There might be a few cases where the recommendation for appointments may not have been unanimous, but there can be no question of suspecting the *bona fides* of the State Government. The procedure so far followed under Article 217 harmonises the initiative and autonomy of the States, on the one hand, and safeguards against the question of undue influence by the State, on the other. We would refer in this connection to our recommendation in our report on the Machinery of the Government of India and its Procedures of Work that the responsibility for judicial administration, including appointments may be transferred from the Ministry of Home Affairs to the Ministry of Law, to be renamed as the Ministry of Law and Justice. The existing procedure for selecting High Court Judges may, therefore, continue as at present with this modification that the role of the Home Ministry may be taken over by the Ministry of Law.

Recommendation : 21

We recommend :

The present procedure and method of appointment of High Court Judges should continue with the modification that the role of the Ministry of Home Affairs may be taken over by the Ministry of Law.

4. The Study Team has suggested that one-third of the Judges may be selected from 'outside' the State. This suggestion will work well so long as one language is the official language of the High Courts and the Supreme Court. English happens to be the language used in all the States in the High Courts. Pressures are now being built up in the States that the courts should adopt regional languages and that Hindi should be the language of the Supreme Court. When different High Courts use different languages, it may be difficult to enforce the recommendations. In case of appointment of a person from one State as a judge of the High Court of a different State, he must be conversant with the regional language of the State where he is to be posted. We, therefore, hesitate to make a firm recommendation in this direction, but so long as one language is the common language in all the courts of India, it is possible to have judges from outside the States.

5. The other recommendations of the Study Team are matters of detail and we do not consider it necessary to disturb the present practice in such matters.

6. The Study Team has made several recommendations on the constitution and functions of the Public Service Commissions. Some of the recommendations relating to State Public Service Commissions have the effect of curtailing the responsibilities and powers now vested in the State Governments and of extending the powers of the Centre in this regard. Centre-State relationships cannot be improved by tilting the balance in favour of over-centralisation or by such encroachments on State autonomy. Therefore, we are not in agreement with this approach. We have noticed certain deficiencies in the present methods of recruitment and functioning of the Public Service Commissions. We have, therefore, made suitable recommendations in our report on Personnel Administration keeping in view the State autonomy and at the same time securing remedies for the deficiencies noticed. Some of the important recommendations are given below :

- (i) In making appointments to a State Public Service Commission, the Governor should consult the Chairman of the Union Public Service Commission and the Chairmen of the State Public Service Commissions. (The latter may be consulted also with regard to the appointment of his own successor).
- (ii) In making appointments to the U.P.S.C., the Chairman of the UPSC should be consulted (even with regard to the appointment of his own successor).
- (iii) Not less than two-thirds of the membership of UPSC should be drawn from amongst the Chairmen and Members of the State Public Service Commissions.
- (iv) A Member selected from among Government officers should have held office under a State Government or the Central Government for at least ten years, and should have occupied the position of a head of department or Secretary to Government in a State, or a post of equivalent rank under the Central Government or a comparable position in an institution of higher education.
- (v) Members from non-officials should have practised at least for ten years in any of the recognised professions like teaching, law, medicine, engineering, science, technology, accountancy, or administration.

These recommendations, when implemented, will ensure that the Public Service Commissions function with independence and high degree of

competence and bring about co-ordination between the Centre and the States in the field of Personnel Administration.

7. We now come to the question of All-India Services. The Study Team on Centre-State relationship has dealt with this in some detail and has made some suggestions. We have taken into consideration these suggestions in formulating our views on this question in our report on Personnel Administration. We have nothing to add to what has been stated there. The relevant extracts from that report are given in Appendix II.

8. The Study Team has made certain suggestions on the working of the Election Commission. One of them relates to the appointment of Regional Election Commissioners temporarily for about six months at the time of General Election for a group of neighbouring States. The Working of the Election Commissioner would not relate to the subject of Centre-State relationships directly. Nor did any of the Chief Ministers of States with whom we had discussions raise this point before us. Under the Constitution, it is an independent Election Commission which is charged with the direct supervision and control of election to both the Houses of Parliament and to the Assemblies of every State. It is for the Chief Election Commissioner to decide the question of assistance that he requires for the conduct of elections and the manner in which the elections should be supervised and conducted. The recommendation of the Study Team, therefore, falls within the purview of the Election Commission. We, therefore, have no comment to offer on these recommendations and would suggest that they may be forwarded to the Election Commission for consideration.

CHAPTER VIII

DECENTRALIZATION OF POWERS IN CERTAIN AREAS

1. A constant source of irritation in the relations between the Centre and the States is the need for the States to obtain 'clearance' from the Centre for action required to be taken from time to time on projects which are financed by the Centre or are carried out by them as agents of the Centre. We have already stated, in our report on the Machinery for Planning, how the role of the Planning Commission with regard to the State Plan projects should not extend to the scrutiny of details. We have also stated, in our report on the Machinery of the Government of India and its Procedures of Work, that in the State field, the Centre's role should be confined to that of a pioneer, guide, disseminator of information, overall planner and evaluator. Even with regard to the projects in which the Centre is directly interested or which are carried out by the States as the agents of the Centre, it is necessary in the interest of speedy completion of work that the Centre's role should be reduced to the minimum. Powers should be delegated to the State officers to the maximum extent. With regard to the exercise of the irreducible minimum of control in the residuary field, matters should be dealt with speedily by the officers dealing with them at the Centre. We illustrate below the application of these principles to projects relating to the highways.

2. National highways are a Central responsibility. The States, however, carry out the work of construction and maintenance. In this connection, the State Governments have been delegated powers in regard to 'maintenance' and 'development', but with regard to certain other matters, viz., construction of approaches and culverts to commercial establishments, factories and residential houses, etc. from the National Highways, construction of passenger sheds, laying of waterpipe lines, etc., concurrence of the Government of India is necessary. It has been represented to us that considerable time is lost in getting the approval of Government of India with regard to these matters. It should be possible to delegate to the States adequate powers in this regard and thus avoid delay in carrying out such items of work.

3. Stretches of National Highways which pass through municipal areas having a population of 20,000 and more are excluded from the definition of "National Highways". These stretches are, therefore, treated as State Highways and the States bear the charges on their development and maintenance. Section 8 of the National Highways Act, however, provides for the

Government of India entering into an agreement with the State Government for sharing the charges on account of maintenance and development of municipal stretches of National Highways. There appears to be a great delay in entering into such agreements and meanwhile, the maintenance of such stretches remains unsatisfactory. We wonder whether in a matter like this the Centre should not relieve the States of their financial responsibility.

4. The National Highway system should be maintained in perfect condition and excluding small portions of it passing through municipal areas only leads such stretches to lapse into sub-standard roads. The money saved by the Centre by excluding such portions from the National Highways is but a small fraction of the expenditure incurred by the Centre on thousands of miles of National Highways and is hardly worthwhile when considered against the background of the unsatisfactory condition in which they are being maintained.

5. Approval of the Government of India is required to the works proposed to be undertaken by the States out of their share of the Central Road Fund. Modification of schemes also requires approval. Considerable time is spent on getting approval from the Centre and this can be saved if suitable powers are delegated to the States, in this regard. Thus the amount of money that is likely to be available from the Central Road Fund, for the next few years, say, five, can be estimated and the States allowed to go ahead with their programmes, subject to their not exceeding the estimates. If necessary, some guidelines can be issued. The Centre could be kept informed of the schemes sanctioned and of the progress of the works from time to time. The replacement of central control at each stage over the expenditure of the funds allotted from the Central Road Fund by delegated authority to the States will make for harmonious Centre-State relationship.

Recommendation 22:

We recommend :

Powers should be delegated to the maximum extent to the States with regard to their work on projects in which the Centre is directly interested or which are carried out by them as agents to the Central Government.

CHAPTER IX

SUMMARY OF RECOMMENDATIONS

CHAPTER II

THE UNITY OF INDIA : ITS PARAMOUNT IMPORTANCE

- 1** No Constitutional amendment is necessary for ensuring proper and harmonious relations between the Centre and the States, inasmuch as the provisions of the Constitution governing Centre-State relations are adequate for the purpose of meeting any situation or resolving any problems that may arise in this field.

CHAPTER III

ALLOCATION OF FUNCTIONS AND RESOURCES BETWEEN THE CENTRE AND THE STATES

- 2** As recommended by us in our Report on the Machinery of the Government of India and its Procedures of Work, the role of the Central Ministries and Departments with regard to subjects falling within the State List should be confined to the matters listed in paragraph 85 of that Report. An analysis should be made, in the light of the criteria laid therein, of the items of work now handled in the Central agencies and such items as do not fulfil the criteria should be transferred to the States.
- 3** (1) Loan for Plan schemes should be given only when they are of a productive type. Whether a scheme is productive or not, should be decided by the Planning Commission in consultation with the Finance Ministry and other Central Ministries concerned.
(2) The repayment of productive loans should be made over a period of time, the States endeavouring to maximise the return on the investments and building up sinking funds for amortization of loans. The timely payment of a proper rate of interest should be insisted upon.
(3) Assistance for non-productive capital schemes should be in the form of capital grants.
(4) The problem of dealing with outstanding Central loans to the States for Plan schemes, as also the question of setting up of sinking fund for the amortization of debt, should be referred to a committee of experts.

- 4 (1) The Finance Commission may be asked to make recommendations on the principles which should govern the distribution of Plan grants to the States. The appointment of the Finance Commission may be so timed that when making its recommendations it will have before it an outline of the 5 year Plan as prepared by the Planning Commission.
- (2) The application of the principles governing the distribution of Plan grants from year to year will be left to the Planning Commission.
- (3) In order to secure effective coordination of the Finance Commission's recommendation and the Plan, a Member of the Planning Commission may be appointed to the Finance Commission.
- (4) The Finance Commission should include two persons, one having experience of financial administration at the Centre and the other having such experience in a State.
- (5) The Unit of the Plan Finance Division of the Ministry of Finance at the Centre may be strengthened. It should form the nucleus of the Finance Commission's secretariat from time to time.
- 5 The Finance Commission should take into consideration the problem of granting increased emoluments to the State Government employees on account of increase in the cost of living, while making allocations of resources to the States.
- 6 The State Governments should adequately tax the direct beneficiaries of the heavy investments in big projects like the Irrigation and Power projects.

CHAPTER IV

ROLE OF THE GOVERNOR

- 7 A person to be appointed as a Governor should be one who has had a long experience in public life and administration and can be trusted to rise above party prejudices and predilections. He should not be eligible for further appointment as a Governor after the completion of his term. Judges, on retirement, should not be appointed as Governors. However, a judge who enters public life on retirement and becomes a legislator or holds an elective office may not be considered ineligible for appointment as Governor.
- 8 The convention of consulting the Chief Minister before appointing a Governor is a healthy one and may continue.

- 9 Guidelines on the manner in which discretionary powers should be exercised by the Governors should be formulated by the Inter-State Council and on acceptance by the Union issued in the name of the President. They should be placed before both Houses of Parliament.**
- 10 The Governor, besides sending the fortnightly reports to the President, should make *ad hoc* reports as and when the need arises. He must act according to his own judgment and discretion in making such reports to the President and also in regard to the reservation of Bills for the consideration of the President.**
- 11 When the Governor has reason to believe that the Ministry has ceased to command a majority in the Assembly, he should come to a final conclusion on this question by summoning the Assembly and ascertaining its verdict on the support enjoyed by the Ministry. When a question arises as to whether the Council of Ministers enjoys the confidence of the majority in the Assembly, and the Chief Minister does not advise the Governor to summon the Assembly, the Governor may, if he thinks fit, *suo motu* summon the Assembly for the purpose of obtaining its verdict on the question.**
- 12 Where functionaries like the Speaker act arbitrarily and prevent the functioning of legislatures, effective remedies must be devised by the legislatures themselves by way of formulating rules of business which would enable the legislature to transact the business for which it was called into session.**
- 13 When a Ministry is defeated in the Assembly on a major policy issue and if the outgoing Chief Minister advises the Governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the Governor should accept the advice. In other cases, he may exercise his discretion.**
- 14 The Governor should not only receive information as provided for in Article 167, but should also actively look for it with a view to discharging his Constitutional responsibilities effectively.**

CHAPTER V

INTER-STATE COUNCIL AND INTER-STATE WATER DISPUTES

- 15 The Inter-State or Centre-State differences should be settled by mutual discussions. To the extent possible, these discussions should be held *in camera*. Only the decisions may be issued in the form of Statements.**

- 16 (1) An Inter-State Council should be constituted under Article 263 of the Constitution.
- (2) It may consist of—
- (i) the Prime Minister—Chairman
 - (ii) the Finance Minister
 - (iii) the Home Minister
 - (iv) the Leader of the Opposition in the Lok Sabha (when one is not available, a representative should be elected by the Opposition parties by single transferable vote)
 - (v) five representatives, one each from the five Zonal Councils.
- (3) Any of the Union Cabinet Ministers or Chief Ministers who may be concerned with a particular subject, may be invited for discussion when the relevant subject is under consideration.
- (4) The proceedings of this Council must be secret.
- 17 (1) The Inter-State Council will have the functions indicated in Article 263 of the Constitution.
- (2) The Inter-State Council may be set up, to begin with, for a period of two years. A decision may be taken on its continuance in the light of experience gained.
- 18 A time limit of three years may be prescribed for settlement of mediation of any Inter-State Water Dispute reckoning from the date the dispute first arises and on the expiry of the time limit the dispute shall be referred to compulsory arbitration by a Tribunal.

CHAPTER VI

THE PROBLEM OF LAW & ORDER

- 19 (1) The use of the naval, military or air force or any other armed forces of the Union in aid of civil power can be made either at the instance of the State Government or *sue motu* by the Centre.
- (2) The Centre may exercise its discretion to locate such forces in the States and to deploy them for maintaining public order for purposes of the Centre, such as protection of central property, central staff, and works in which the Centre has an interest.

- 20 Before issue of directions to a State under Article 256 the Centre should explore the possibilities of settling points of conflict by all other available means.**

CHAPTER VII

SOME IMPORTANT INSTITUTIONS HAVING A BEARING ON CENTRE-STATE RELATIONSHIPS

- 21 The present procedure and method of appointment of High Court Judges should continue with the modification that the role of the Ministry of Home Affairs may be taken over by the Ministry of Law.**

CHAPTER VIII

DECENTRALISATION OF POWERS IN CERTAIN AREAS

- 22 Powers should be delegated to the maximum extent to the States with regard to their work on projects in which the Central is directly interested or which are carried out by them as agents to the Central Government.**

Sd/-

K. Hanumanthaiya
Chairman

Sd/-

H. V. Kamath
Member

Sd/-

Debabrata Mookerjee
Member

Sd/-

T. N. Singh
Member

Sd/-

V. Shanker
Member

Sd/-

V. V. Chari

Secretary.

New Delhi,

Dated 19th June, 1969.

APPENDIX I

PARAS 85 TO 87 OF THE REPORT OF THE ADMINISTRATIVE REFORMS COMMISSION ON "THE MACHINERY OF THE GOVERNMENT OF INDIA AND ITS PROCEDURES OF WORK".

"85. The Study Team on Centre-State Relationships has suggested the following functions for the Central Ministries dealing with subjects falling within the sphere of the States :

1. Providing initiative and leadership to the States, and in particular serving as a clearing house of information intimating details and data about good programmes and methods adopted in one part of the country to the rest of the country.
2. Undertaking the responsibility for drawing up the national plan for the development sector in question in close collaboration with the States, and developing for this purpose well-manned planning and statistical units.
3. Undertaking research at a national level, confining attention to matters which are beyond the research resources of States.
4. Undertaking training programmes of a foundational nature, e.g., training of planners and administrators and training of trainers.
5. Taking the initiative in evaluation of programmes with the object of checking progress, locating bottlenecks, taking remedial measures, making adjustments and so on.
6. Providing a forum and a meeting ground for State representatives for the exchange of ideas on different subjects and for the evolution of guidelines.
7. Attending to functions of the nature of coordination which can only be handled at the Centre.
8. Maintaining relations with foreign and international organisations.'

86. We have recommended earlier in our report on the Machinery for Planning that the Centrally-sponsored schemes should be kept to the minimum. We also proposed in that report that only certain portion of the amount available as grant assistance to the States should be tied to schemes or groups of schemes of basic national importance, the remainder being distributed *pro rata* over other schemes eligible for Central assistance. The Study Team on Centre-State Relationships has examined in detail the role

and functions of seven Central agencies in regard to matters falling within the State and Concurrent Lists. It has enumerated several Central and Centrally sponsored schemes which, properly speaking, should not be handled by the Centre. Some examples of the functions, which according to that Team should be transferred to the State Governments, are as follows:

- (1) (a) Grading of ghee, butter, vegetable oil and honey;
- (b) non-foundational training courses of three to five months duration for graders (inspectors) and marketing secretaries; and
- (c) inspection and licensing of cold storage and small scale manufacture of food products.

(These tasks are at present being performed by the organisation of the Agricultural Marketing Adviser, Department of Agriculture).

- (2) Small Industries Service Institutes and their extension centres at present administered by the Development Commissioner (Small Scale Industries).
- (3) National Fitness Corps Scheme in the field of physical education administered by the Ministry of Education.
- (4) Grants to voluntary organisations situated in States and engaged in activities of a local character.
- (5) A larger number of the current schemes of animal husbandry and dairying operated by the Indian Council of Agricultural Research and the Central Administered poultry and sheep farms.

87. We are in general agreement with the approach suggested above by the above Study Team. We have no doubt that if this approach is accepted and translated into action a good deal of work in the Ministries, such as, Education, Health, Social Welfare, Irrigation, Food and Agriculture would cease to be handled by the Centre. Where any State is deficient in the means to do justice to such work it would be better for the Centre to help the States to equip themselves for effective discharge of those responsibilities than handle them itself. Such help, for instance, could take the form of loan of technical or administrative personnel and loan of equipment. Measures need also be devised to secure better coordination between the States and the Centre and to ensure that States make progress in the right direction.

10. Recommendation :

We, therefore, recommend that the role of the Central Ministries and Departments in subjects falling within the State List should be confined to matters listed in para 85. An analysis should be made in the light of these criteria of the items of work now handled by the Central agencies and such items as do not fulfil the criteria should be transferred to the States.”.

APPENDIX II

EXTRACTS FROM THE RECOMMENDATIONS OF THE REPORT ON PERSONNEL ADMINISTRATION

The All-India Services have come to stay. The concepts underlying the All-India Services, namely, common recruitment which seeks to ensure uniform standards of administration in all the States, and the availability of experience gained in different parts of the country to the higher administration at the Centre, are valid. More All-India Services are being contemplated in different fields of administration in the States and at the Centre. We would urge their early formation. It is, of course, obvious that such All-India Services would be in a position to function effectively only if Centre-State relations continue to rest on a sound and cordial basis.

In the changing context, the old concept underlying the formation and role of the IAS would require re-adjustment. We would recommend that a specific functional field must be carved out for the IAS. This could consist of Land Revenue Administration, exercise of magisterial functions and regulatory work in the States in fields other than those looked after by officers of other functional services. All posts in a functional area whether in the field or at headquarters or in the Secretariat should be staffed by members of the corresponding functional services or by functional officers not encadred in a Service.

The upper age limit for entrance to the competitive examinations may be raised to 26.

The subjects to be offered at the combined competitive examination for non-technical Services may include Engineering subjects as well as subjects relevant to a medical degree.

The post of Collector should be in more than one Grade and the junior-most Grade should be available for those having not less than 8 years of experience.

The posts at the level of Deputy Secretary or equivalent at the Central headquarters, which do not fall within a particular functional area, should be demarcated into eight areas of specialisms as follows :

- (i) Economic Administration;
- (ii) Industrial Administration;

- (iii) Agricultural and Rural Development Administration;
- (iv) Social and Educational Administration;
- (v) Personnel Administration;
- (vi) Financial Administration;
- (vii) Defence Administration and Internal Security;
- (viii) Planning.

Outside the functional area the tenure of appointment in the case of Deputy Secretaries and his equivalents should be six years.

Senior management posts outside the functional areas should be filled by officers who have had experience as members of the policy and management pool in one of the eight specialisms. They should have completed not less than seventeen years of service. There should be no fixed tenure for senior management posts.

The Central Government should evolve a common pattern of field training for IAS probationers, which may be adopted by the States with modifications suited to their local conditions. During their training in the States, the IAS probationers should be assigned to carefully chosen senior Collectors who are known for their interest in training and whose methods of work are considered worthy of emulation.

Training for middle-level management in the Secretariat (for Deputy Secretaries and other officers with equivalent status) should have the following three broad elements :

- (a) training in headquarters work;
- (b) special courses in each of the eight broad specialisms; and
- (c) sub-area specialism training.

A civil servant may be allowed to retire voluntarily after he has completed fifteen years of service and given proportionate pension and gratuity.

The Department of Personnel should have the following functions and responsibilities :

- (a) formulation of personnel policies on all matters common to the Central and all-India Services, and inspection and review of their implementation;

- (b) talent hunting, development of personnel for "senior management" and processing of appointments to senior posts;
- (c) manpower planning training and career development;
- (d) foreign assistance programme in personnel administration;
- (e) research in personnel administration;
- (f) discipline and welfare of staff and machinery for redress of their grievances;
- (g) liaison with the Union Public Service Commission, State Governments, Professional Institutions, etc.; and
- (h) staffing of the middle-level positions in the Central Secretariat (of Under Secretaries and Deputy Secretaries) with the assistance of and on the advice of the Establishment Board.

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